



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/731,855 Confirmation No. 4246
Applicant : Kenneth R. Wilkes
Filed : December 8, 2003
Grp./AU : 3727
Examiner : Jes F. Pascua

DECLARATION OF SAUL EPSTEIN

The undersigned Saul Epstein declares as follows:

I am the attorney of record in Application Ser. No. 10/731,855. Insofar as I can remember and/or ascertain, I did not receive the Office Action bearing a mail date of July 21, 2006 prior to the time a copy was faxed to me by the PTO on April 2, 2007. Since receiving a Notice of Abandonment on approximately February 27, 2007, I have thoroughly searched my office, and have found no indication of having received the July 21, 2006 Office Action.

I am a sole practitioner, and have no secretary or other assistants. I am over retirement age, and am essentially retired, working only with a very few old clients. Inasmuch as my workload is very light, I am able to function with a simple (but effective) docketing system. When I receive a communication from the PTO, it is my practice to immediately make a copy of it,

place the original in the file jacket for the case, and place the copy in a Docketing Folder (in order of response date). The Docketing Folder is my reminder of what Office Actions are waiting for response. Because of my light workload, there are rarely more than two pending Office Actions in the folder, usually one or zero. When working on a response to an Office Action, it is my practice to remove the copy of the Action from the Docketing Folder, leaving the dated PTO transmittal memo in the folder. I use that copy to guide my preparation of a response. When the response is mailed to the PTO, I remove the PTO OA transmittal memo from the Docketing Folder, and discard it. I have found no evidence that a copy of the July 21, 2006 Office Action was ever in the Docketing Folder, nor in the file jacket for the case.

In the course of my office search, I looked in all of the files that I worked on around the time that the July 21, 2006 OA might have been received, and found no trace of it.

I therefore declare that to the best of my recollection, belief and knowledge, I did not receive the Office Action dated July 21, 2006 prior to its recent faxing to me. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are

believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated 4/5/07

Saul Epstein
SAUL EPSTEIN